

**Kentucky Trustees Conference
September 21-22, 2003
Cincinnati Airport
“Standards for Board Behavior”
Rich Novak
Association of Governing Boards**

- I. Standards for Board Behavior – focus more on the Do’s, i.e.: good practice and effective behaviors
 - A. AGB tries to promote good, effective practice, and good modeled behavior; that’s what we’re about...
 - B. AGB Publications to be referenced:
 - i. Trustee Responsibilities: A Guide for Governing Boards of Public Institutions by Tom Ingram – AGB Board Basics
 - ii. A Guide to Conflict of Interest and Disclosure by Tom Ingram – AGB Board Basics
 - iii. Institutional Ethics and Values by Thomas Corts – AGB Board Basics
 - iv. Governing and Foundation Board Relationships by Richard Legon – AGB Board Basics
 - v. AGB State on Institutional Governance and Governing in the Public Trust: External Influences on College and Universities – AGB Board Basic
 - C. The handouts and overheads are extracted from these publications
- II. The session description has it right
 - A. Hardly a month goes by without a corporate board or major non-profit board scandal: ENRON, Worldcom, United Way – Capital Area
 - 1. NYSE stock exchange the latest over excessive salary for the chair – Dick Grasso
 - 2. The broader questions being asked by large institutional investors and the SEC is in regard to the role of the Exchange and consequently the role of the board and its compensation committee
 - 3. A real lack of clarity on responsibilities of the board
- III. Governing Board and Individual Trustee Responsibilities
 - A. So just as a reminder
 - 1. Here’s a list of board responsibilities

- Clarify and/or reaffirm the mission
- Select, appoint, support, and assess the performance of the chief executive
- Approve (and participate in) institutional planning
- Review educational and public service programs in light of the mission
- Ensure the institution's performance is assessed
- Ensure the well-being of the faculty, students, and staff
- Ensure effective financial management
- Ensure adequate financial resources
- Ensure adequate and well-maintained facilities
- Preserve institutional independence
- Relate the institution to the state and community
- Interpret the needs of society to the institution
- Serve as a court of appeals if necessary
- Assess own performance

B. And here's a list of individual trustee and regent responsibilities – almost a position description that is good for trustees and policymakers both to understand, respective, and appreciate

1. To seek to be fully informed about the college or university and its role in the state and in higher education and to be responsive to the changing environments which affect it.
2. To support the mission of the institution or university system.
3. To speak one's mind at board meetings but to support policies and programs once established.
4. To understand that the trustees' is policymaking and not involvement in administration or the management process.
5. To strengthen and sustain the president while being an active, energetic, and probing board member exercising critical judgment on policy matters.
6. To communicate promptly to the president and board chair any significant concern or complaint and then let the president deal with it.
7. To defend the autonomy and the independence of the university.
8. To maintain an overriding loyalty to the entire university or university system rather than to any part of it or constituency within it.
9. To represent all the people of the State and no particular interest, community, or constituency.
10. To help enhance the public image of the university system, institutions, and its board.
11. To recognize that authority resides only with the board as a whole and not in its individual members.

12. To recognize that the president or chancellor is the primary spokesperson for the university or the system and the chairman of the board is the only other person authorized to speak for the board.
13. To foster openness and trust among the board, the administration, the faculty, the students, state government, and the public.
14. To maintain a decent respect for the opinions of one's colleagues and a proper restraint in criticism of colleges and officers.
15. To recognize that no board member shall make any request or demand for actions that violates the written policies, rules, and regulations of the board or of the university.
16. To maintain the highest ethical standards and never to allow any personal conflict of interest to exist.

C. This list of individual responsibilities really says that trustees and regents need to:

1. take time to learn about institution
2. come to board meetings prepared
3. serve institution as a whole – not one component
4. understand that individual members have no standing (not a public official)
5. commit the time
6. avoid conflicts of interest (more on later)
7. model behavior (as an individual and as a board)
 - a. be civil
 - b. disagree but at end of day, support majority position
 - c. don't use open meetings for advantage
 - d. don't talk out of turn to the press
 - e. maintain confidentiality
 - f. don't "Trojan Horse" administration
 - g. adhere to high ethical standards

D. This overhead raises questions about accountability – Who are you accountable to? (The state, institution, students, governor, legislature, faculty, staff; each other?)

1. I would ascertain that you are the state's surrogate – that is invested by the state – you and the CPE exist and are responsible to do what state government cannot do or should not do. Rather than accountable to state government, boards must be responsive and communicative to and with the state and its elected leaders. And, you must see that your institutions are accountable – that's one of your major responsibilities in this surrogate role.

V. Conflict of Interest

A. What defines a “conflict of interest”?

1. From Ingram, page 7: A potential conflict of interest is a situation that involves a personal, familial, or business relationship between a trustee or institutional officer and the institution that can cause the institution to be legally (or otherwise) vulnerable to criticism, embarrassment, or litigation in the opinion of responsible stakeholders. Real and perceived conflicts of interest involve ethical or moral values, to be sure, but they are distinguishable and much more visible because of two factors, one or both of which may be present:
 - a) They usually involve money or profit or otherwise bear on the fiduciary responsibility of the board to ensure no trustees or institutional officers use (or are perceived to use) their institutional affiliations for personal financial gain, except as institutional policy may *explicitly* allow.
 - b) They usually involve one or more aspects of the institution’s programs, real property, personnel, or auxiliary enterprises.
2. A recent AGB survey found that 60% of boards have a statement and half of those define a conflict of interest

B. How to avoid conflicts of interest

1. develop a board policy; should be general policy; should cover board members and senior administrators
 - a. realize that you do not want to discourage potential trustees from considering board service
 - b. use common sense and decide on a case-by-case basis
 - c. sample policy and disclosure form (handout)
 - d. board must enforce; police itself – not the administration or president
2. Bottom line is to protect integrity of the board and the institution
3. Recuse self if potential conflict arise; if in doubt on a issue – err on the side of disclosure
 - a. recusal may not be enough, let full board decide

VI. Ethics

A. Closely related to conflict of interest

1. See one-page suggested list of Ethical Guidelines for Board Members

- *Duty of Loyalty*: Never use your position to make personal profit for yourself or anyone else
- *Duty of Care*: The judicial system expects you to exercise your best judgment at all times
- *Exercise prudence* in the control and transfer of funds
- Ensure that all *disclosures* are accurate, while protecting the confidentiality of information that should be kept confidential
- Do what you sense of *fairness, ethics, values and personal integrity* dictate even though you may not be obliged to do so by law, regulation or custom
- Maintain your *independence and objectivity*
- Stay away from *political contribution or action* unless the funds are clearly your own
- Never accept (or offer) *favors or gifts* from (or to) anyone who does business with the university

B. List says:

1. Don't use trustee position for personal or political gain
 2. No surprises
 3. Demand institutional ethics
 4. Develop a board-approved "Code of Ethics and Statement of Values"
1. Self-regulation and autonomy make it a necessity; areas to consider covering:
 - a. athletics
 - b. data responses (want to put best institutional foot forward, but not public relations)
 - c. adherence to local, state, and federal laws and court rulings
 - d. policy or clarity on who has legal authority from the board for certain actions – president, VP for finance, VP for administration (board may choose to reserve certain powers to itself to protect itself and the institution)
 - e. student codes of conduct?

VII. Financial Stewardship

- A. May have finance committee on funding and allocation but relevant issue here relates to compensation and audit committees
- B. On compensation for president: whole board should be informed and understand; be able to disclose, defend and explain compensation package
- C. Compensation Committee should adhere to board policies to ensure clear lines of communication and authority

- D. Full board must understand foundation supplements and any bonuses or deferred compensation; and any other non-salary benefits such as tenure, housing
- E. Best to have a contract; understand applicability of state statutes, consult legal counsel (or AG's office)
- F. Audit committee:

- 1. understand audit report and work of internal audit staff
- 2. if audit committee, all board members should review and understand auditor's report
- 3. audit committee could also have role in conflict of interest policy

G. University-affiliated foundation

- 1. There is a need for foundation autonomy
- 2. Develop clear relationship and MOU or working agreement with foundation on who does what and what payments or reimbursements are allowable and legal
- 3. Governing board sets foundation fund-raising priorities in collaboration with foundation; president is key link
- 4. Presidential discretionary funds are absolutely necessary – but understand what they're for, that they're fully reported in foundations annual report
- 5. Several areas of ethics and conflict of interest can arise with the foundation over:
 - a. gifts outside institutional priorities that may have hidden costs
 - b. questionable donors
 - c. real estate deals gone bad
 - d. foundation assets given as political contributions
- 6. Bottom line: insist on working agreement and foundation bylaws, gift guidelines, and public disclosure when at all possible